

AGENDA ITEM SUMMARY

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Regulatory Review “No MO Red Tape” Initiative
Coordinating Board for Higher Education
September 14, 2017

DESCRIPTION

On January 10, 2017, Governor Eric Greitens signed [Executive Order 17-03](#), which requires Missouri agencies to conduct a review of all existing and proposed regulations. The initiative, nicknamed “No MO Red Tape,” represents an effort by state agencies to identify regulations that are considered to be ineffective, unnecessary, or unduly burdensome on the citizens and businesses. This board item provides information on the department’s progress toward fulfilling the governor’s executive order.

Background

Executive Order 17-03 outlines the requirements that each agency should follow in this special review:

- Accept written public comments for at least a 60-day period;
- Hold at least two public hearings to allow citizens and businesses to provide comment on regulations;
- Affirm in a report submitted by May 31, 2018, that each existing or proposed regulation is essential to the health, safety, or welfare of Missouri residents; costs of the regulation do not outweigh the benefits; a process and schedule exists to measure the effectiveness of the regulation; less restrictive alternatives have been considered; the regulation is based on sound, reasonably available scientific, technical, or economic information; and the regulation does not unduly or adversely affect Missouri citizens or customers of the state; and
- Repeal or cease rulemaking for any regulation that does not meet the above affirmations by June 30, 2018.

The governor’s office partnered with George Mason University’s Mercatus Center to review the regulatory language contained in all of Missouri’s Code of State Regulations. Mercatus found that the Missouri CSR contains over 113,000 restrictions, as measured by words and phrases such as “shall,” “must,” “may not,” “prohibited,” and “required.” As part of this initiative, each agency has been asked to collect public comments and reduce the number of restrictions found in the CSR. According to data provided by Mercatus, MDHE currently has 1,423 total restrictive words in the CSR.

Progress

MDHE created an [administrative rule page](#) with a form for the public to submit comments July 1-November 30, 2017, on the MDHE website. This exceeds the required timeframe for accepting public comments by three months. MDHE also completed its first public hearing by setting up a comment booth along with ten other state agencies at the Missouri State Fair in August 2017. Additional public hearings are scheduled for September 13, 2017, 5:00-6:00 p.m., and September 14, 2017, 8:30-9:00 a.m., in Jefferson City. Press releases, social media, and e-distribution messages announcing the rule review process and website, the Missouri State Fair public hearing, and the public hearings in September were issued in July, August, and September, respectively. Additional announcements are forthcoming in December 2017, March 2018, and May 2018 to coincide with releases of the draft and final reports.

Abbreviated reports are provided to the governor’s office monthly providing the number and nature of comments received. To date, MDHE has received 12 comments as a result of this effort. One-third of comments received are regarding concerns about removing the mandatory tuition break for out-of-state residents’ Missouri tax payments, which was formerly codified at 10 CSR 6-3.010. The remaining comments were concerned with funding for higher education; changing section 173.091, RSMo, to allow for free, for-credit courses for senior citizens; support for free speech and legal protest on college

campuses; families being required to complete the Federal Application for Free Student Aid; desire to have free higher education; and cuts to Bright Flight.

Each unit within MDHE is reviewing their respective rules and categorizing those that need to be retained as-is, amended, or rescinded. As the final report is due to the governor's office May 2018, MDHE staff will complete the review and submit a final report to the CBHE at its meeting in March 2018 for approval.

Conclusion

The CBHE and MDHE strive to deliver a coordinated postsecondary education system that provides accessible, affordable, and innovative education that supports economic growth, enhances civic engagement, and improves the quality of life for all Missourians. Hearing from higher education stakeholders and constituents regarding what is working, or is not working in higher education, and ensuring that rules and regulations reflect current practice is one key toward meeting that goal.

STATUTORY REFERENCE

Executive Order 17-03

RECOMMENDED ACTION

This is an information item only.

ATTACHMENT(S)

Attachment A: Executive Order 17-03

Attachment B: Policy Brief, *A Snapshot of Missouri Regulation in 2017*

EXECUTIVE ORDER
17-03

JAN 10 2017

SECRETARY OF STATE
COMMISSIONS DIVISION

WHEREAS, Missouri's state government has proposed and codified an excessive amount of regulations; and

WHEREAS, the Missouri Register, a publication that includes proposed and final regulations, has published more than 40,000 pages since 2000; and

WHEREAS, Missourians and Missouri businesses deserve efficient, effective, and necessary regulations; and

WHEREAS, regulations should not reduce jobs, stifle entrepreneurship, limit innovation, or impose costs far in excess of their benefits; and

WHEREAS, regulations that are ineffective, unnecessary, or unduly burdensome must be repealed; and

WHEREAS, removing needless and burdensome regulations will make Missouri more attractive to businesses and encourage job growth.

NOW THEREFORE, I, ERIC R. GREITENS, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order:

1. Every State Agency shall immediately suspend all rulemaking.
 - a. This suspension shall remain in effect until February 28, 2017.
 - b. Any proposed regulation that affects health, safety, or welfare, or is otherwise time sensitive or required by law, should be submitted to the Office of the Governor prior to February 28, 2017.
2. No State Agency shall release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations at any time until approved by the Office of the Governor.
3. Every State Agency shall undertake a review of every regulation under its jurisdiction within the Code of State Regulations.
 - a. As part of its review, every State Agency shall (i) accept written public comments for at least a 60-day period; (ii) hold at least two public hearings to allow citizens and businesses to identify regulations that are ineffective, unnecessary, or unduly burdensome; (iii) solicit and incorporate comments and advice from private citizens, stakeholders, regulated entities, and other interested parties; and (iv) complete the review by May 31, 2018.
 - b. Every State Agency shall designate an individual to oversee the review.
 - c. For each existing regulation, and any future proposed regulation, every State Agency shall affirm in a report submitted to the Office of the Governor by May 31, 2018:
 - i. The regulation is essential to the health, safety, or welfare of Missouri residents;
 - ii. The costs of the regulation do not outweigh their benefits, based on a cost-benefit analysis;
 - iii. A process and schedule exist to measure the effectiveness of the regulation;

- iv. Less restrictive alternatives have been considered and found less desirable than the regulation;
 - v. The regulation is based on sound, reasonably available scientific, technical, economic, and other relevant information; and
 - vi. The regulation does not unduly and adversely affect Missouri citizens or customers of the State, or the competitive environment in Missouri.
- d. By June 30, 2018, every State Agency shall take any action necessary to repeal or to cease rulemaking for any regulation that does not meet any criteria in Section 3(c) of this Order.
4. This Order does not modify any State Agency's obligations under Section 536.175, RSMo. Any State Agency that has already completed the review required by Section 536.175, RSMo. may include any applicable results of that review when responding to this Order. Any State Agency that has not already completed the review required by Section 536.175, RSMo. shall do so in the manner and on the schedule required by statute.
5. "State Agency" shall have the definition provided in Section 536.010(8), RSMo.
6. This Order shall supersede any previous executive order that is inconsistent with the terms contained herein.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 10th day of January, 2017.

A handwritten signature in black ink, appearing to read "Eric R. Greitens", written over a horizontal line.

Eric R. Greitens
Governor

A handwritten signature in black ink, appearing to read "John R. Ashcroft", written over a horizontal line.

John R. Ashcroft
Secretary of State



A Snapshot of Missouri Regulation in 2017

113,112 Restrictions, 7.5 Million Words, and 10 Weeks to Read

by James Broughel, Oliver Sherouse, and Daniel Francis

July 2017

It would take an ordinary person more than three years to read the entire *US Code of Federal Regulations* (CFR), which contained more than 112 million words in 2017.¹ The sheer size of the CFR poses a problem not just for the individuals and businesses that want to stay in compliance with the law, but also for anyone interested in understanding the consequences of this massive system of rules. States also have sizable regulatory codes, which add an additional layer to the enormous body of federal regulation. A prime example is the 2017 Missouri regulatory code, known as the *Missouri Code of State Regulations* (CSR).²

A tool known as State RegData³—a platform for analyzing and quantifying state regulatory text—was developed by researchers at the Mercatus Center at George Mason University. State RegData in minutes captures information that an ordinary person would take hours, weeks, or even years to obtain. For example, the tool allows researchers to identify the industries most targeted by regulation by connecting keywords relevant to those industries with counts of words known as regulatory restrictions. These are words and phrases like “shall,” “must,” “may not,” “prohibited,” and “required” that can signify legal constraints and obligations.⁴ As shown in figure 1, the three industries with the highest estimates of industry-relevant restrictions in the 2017 Missouri CSR are utilities, ambulatory healthcare services, and chemical manufacturing.

State RegData also reveals that the Missouri CSR contains 113,112 restrictions and more than 7.5 million words. It would take an individual 418 hours—or more than 10 weeks—to read the entire CSR. That’s assuming the reader spends 40 hours per week reading and reads at a rate

1. “The QuantGov Regulatory Clock,” QuantGov, accessed July 7, 2017.

2. *Missouri Code of State Regulations*, accessed July 4, 2017.

3. State RegData forms a part of a broader project called QuantGov, which seeks to quantify legal text. See Patrick A. McLaughlin and Oliver Sherouse, “QuantGov—A Policy Analytics Platform,” QuantGov, October 31, 2016.

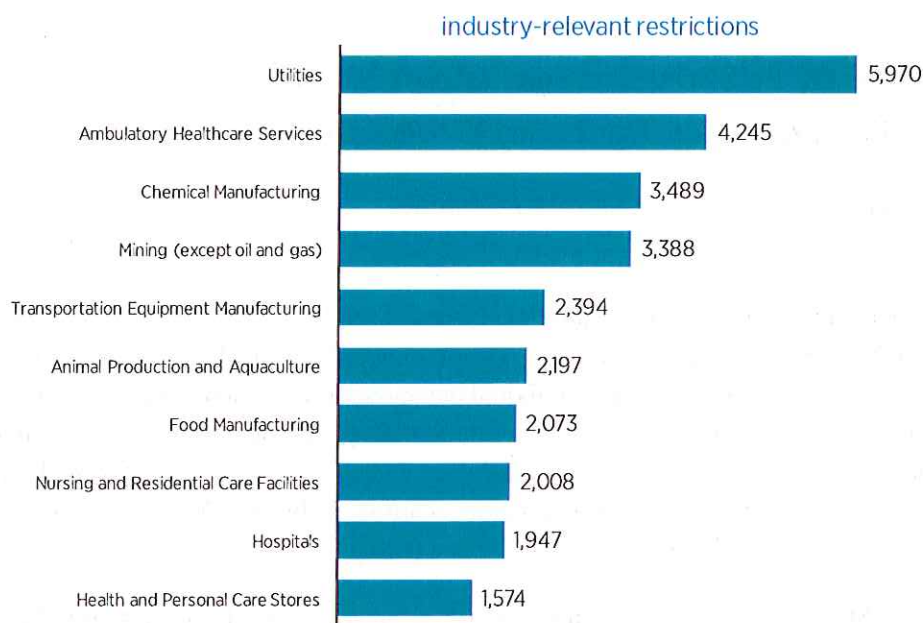
4. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. Furthermore, restrictions may at times relate to government employees rather than the public.

For more information, contact

Bryce Chinault, Outreach Associate, 703-993-8148, bchinault@mercatus.gmu.edu
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, VA 22201

of 300 words per minute. For comparison, in 2017 there were more than 1.15 million additional restrictions in the federal code.⁵ Individuals and businesses in Missouri must navigate all these restrictions to remain in compliance.

Figure 1. The Top 10 Industries Targeted by Missouri State Regulation in 2017



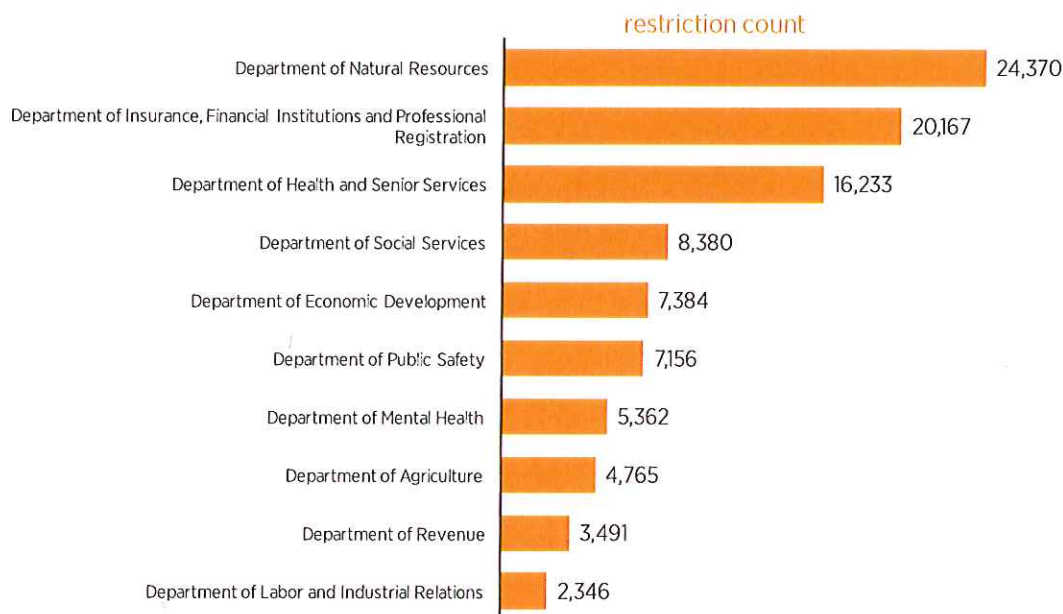
Source: "State Administrative Codes—Missouri," <http://quantgov.org/data/>.

The titles of the CSR are organized based on the regulatory department that writes the rules housed within those titles. Figure 2 shows that in 2017, rules from the Department of Natural Resources, which are found in title 10, contained more than 24,000 restrictions. By this measure, the Department of Natural Resources is the biggest regulator in Missouri. Coming in second is the Department of Insurance, Financial Institutions and Professional Registration, whose rules can be found in title 20. This title contains more than 20,000 restrictions.

Federal regulation tends to attract the most headlines, but it is important to remember that the more than 112 million words and 1.15 million restrictions in the federal code are just the tip of the iceberg when it comes to the true scope of regulation in the United States. States like Missouri write millions of additional words of regulation and hundreds of thousands of additional restrictions. State-level requirements carry the force of law to restrict individuals and businesses just as federal ones do.

5. "The QuantGov Regulatory Clock," QuantGov.

Figure 2. The Top 10 Regulators in Missouri in 2017



Source: "State Administrative Codes—Missouri," <http://quantgov.org/data/>.

Researchers are only beginning to understand the consequences of the massive and growing federal regulatory system on economic growth and well-being in the United States.⁶ Meanwhile, the effects of state regulation remain largely unknown. If this snapshot of Missouri regulation in 2017 is a good indicator, then the states are also active regulators, suggesting the true impact of regulation on society is far greater than that of federal regulation alone.

6. See, for example, Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

ABOUT THE AUTHORS

James Broughel is a research fellow for the State and Local Policy Project at the Mercatus Center at George Mason University. Broughel has a PhD in economics from George Mason University. He is also an adjunct professor of law at the Antonin Scalia Law School.

Oliver Sherouse is the research analyst for the Program for Economic Research on Regulation at the Mercatus Center at George Mason University. He studied history and computer science at Duke University and received his MPP from Georgetown University.

Daniel Francis is a research programmer at the Mercatus Center. He received his BS in economics and mathematics from Florida State University.

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